

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

LIONEL SCOTT ELLISON,

Plaintiff,

vs.

YELLOWSTONE COUNTY, et al.,

Defendants.

CV 18-56-BLG-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Lionel Ellison, a prisoner proceeding without counsel, has filed a Complaint and an Amended Complaint alleging violations of his constitutional rights during the course of his 2015 criminal trial. (Docs. 2, 15.) Ellison's allegations arise from his arrest and criminal prosecution. Ellison alleges violations of the following constitutional rights: (1) his Fourth Amendment right to only be arrested based upon probable cause; (2) his Fifth Amendment right to due process and right against double jeopardy; (3) his Sixth Amendment right to competent assistance of counsel; (4) his Eighth Amendment right to adequate food and

protection from other inmates; and (5) his Fourteenth Amendment rights to due process and equal protection were violated when the prosecution withheld exculpatory and impeaching evidence, the trial judge was biased, Yellowstone County detectives committed violent crimes against him and he was wrongfully convicted, and appellate counsel refused to adequately represent him in a timely and correct manner.

Ellison is a prisoner proceeding in forma pauperis. Judge Johnston reviewed his Complaint under 28 U.S.C. § 1915. Section 1915(e)(2)(B) allows for the dismissal of a pro se prisoner complaint before it is served upon the defendants if it is frivolous, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. A complaint is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A complaint fails to state a claim upon which relief may be granted if a plaintiff fails to allege the “grounds” of his “entitlement to relief.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Further, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). Judge Johnston screened Ellison’s Complaint and determined that that Ellison’s claims were frivolous and lacked

arguable substance in law or fact. (Doc. 14 at 12.) Judge Johnston issued Findings and Recommendations in this matter on November 8, 2018. (Doc. 17.)

Judge Johnston ordered that Defendants Washington, Groslock, Johnson, and Peters are required to respond to Ellison's conditions of confinement claims and retaliation claims. *Id.* at 12. Judge Johnston determined that Defendants Yellowstone County, the City of Billings, Scott Twito, Julie Mees, Brett Linneweber, Sheriff Mike Linder, Detective Frank Fritz, Officer B. Richardson, Michael Kakuk, Danny Tenenbaum, Chad Wright, Captain Bufto, and Lt. Metzger should be dismissed. *Id.* at 17.

Ellison timely filed an objection on November 26, 2018. (Doc. 18.) Ellison's objections entitle him to de novo review of those findings and recommendations to which he specifically has objected. 28 U.S.C. § 636(b)(1)(C). The Court reviews for clear error the portions of the Findings and Recommendations to which Ellison did not specifically object. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections constitute perfunctory responses argued in an attempt to engage the district court in a reargument of the same arguments set forth in the original response, however, the Court will review the applicable portions of the findings and recommendations for

clear error. *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Ellison's objection fails to present legal argument and supporting authority. Ellison failed to object properly to any of Judge Johnston's Findings and Recommendations. This Court reviews therefore the record for clear error. L.R. 72.3(a); *see also McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations.

1. IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 17), are **ADOPTED IN FULL**.

2. IT IS FURTHER ORDERED that Defendants Washington, Groslock, Johnson, and Paters will be required to respond to Ellison's conditions of confinement claims and retaliation claims.

3. IT IS FURTHER ORDERED that Ellison's claims arising from his arrest and criminal prosecution are **DISMISSED**.

4. Defendants Yellowstone County, the City of Billings, Scott Twito, Julie Mees, Brett Linneweber, Sheriff Mike Linder, Detective Frank Fritz, Officer

B. Richardson, Michael Kakuk, Danny Tenenbaum, Chad Wright, Captain Bofto,
and Lt. Metzger are **DISMISSED**.

DATED this 13th day of December, 2018.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive style with a horizontal line underneath it.

Brian Morris
United States District Court Judge